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Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DISMAL RIVER TERMINAL, LLC
FOR
DISMAL RIVER TERMINAL
Registration No. 10818**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Dismal River Terminal, LLC regarding the Dismal River Terminal, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. “DRT” means Dismal River Terminal, LLC, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dismal River Terminal, LLC is a “person” within the meaning of Va. Code § 10.1-1300.
6. “Facility” means the Dismal River Terminal, LLC – Dismal River Terminal facility, located at State Route 638, Dismal Creek in Buchanan County, Virginia.
7. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
9. “PCE” means a partial compliance evaluation by DEQ staff.
10. “Permit” means a NSR permit to modify and operate a coal preparation and processing plant, which was issued under the Virginia Air Pollution Control Law and the Regulations to Dismal River Terminal, LLC on January 7, 2021, and which supersedes the Article 6 permit dated June 4, 2020.
11. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
12. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
13. “Va. Code” means the Code of Virginia (1950), as amended.
14. “VAC” means the Virginia Administrative Code.
15. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. “VEE” means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. DRT owns and operates the Facility in Buchanan County, Virginia. The Facility is the subject of the Permit, which allows DRT to modify and operate a coal preparation and processing plant.
2. On December 13, 2021, DEQ staff conducted a PCE of the Facility and observed that DRT had not installed the Marcy Rod Mill (Reference No. RM2) in accordance with the approved Permit.

3. 9 VAC 5-80-1120(A) states: “No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.”
4. During the December 13, 2021 PCE, DEQ staff observed the Marcy Rod Mill (Reference No. RM2) scalping coke from the feed belt that supplies coke to the rod milling enclosure (building) identified in the Permit. Reference No. RM2 was operating outside of the enclosure, without any emissions controls. DRT was not operating the Marcy Rod Mill (Reference No. RM2) in such a manner as to demonstrate compliance with the emission limits set forth in the approved Permit.
5. Condition No. 2 of the Permit states, in part: “Particulate emissions from the rod mill operations (Reference Nos. RM1 and RM2) shall be controlled by full enclosure and baghouse. The enclosures and baghouse shall be provided with adequate access for inspection.”
6. Condition No. 23 of the Permit states: “The combined emissions from the rod mill operations (Reference No. RM1 and RM2) roll crusher (Reference No. CR), and coke rail loadout by the mobile stacker conveyor (Reference No. CL) shall not exceed the following:

Particulate Matter	4.44 lbs/hour	7.68 tons/year
PM-10	2.77lbs/hour	6.85 tons/year
PM-2.5	2.23 lbs/hour	6.42 tons/year

These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 2, 14, and 18.”

7. 9 VAC 5-80-1180 states, in part: “...D. Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter: ...2. Conditions necessary to enforce emission standards. Conditions may include but not be limited to, any of the following: ...d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment...”
8. During the December 13, 2021 PCE, DEQ staff determined that DRT failed to complete VEEs within 12 months of the previous VEE testing, performed August 28, 2020, for Reference Nos. 31, 32, 42A – 42D, 43, and 48. The VEEs were completed on September 24, 2021. DRT also failed to provide the results of the September 24, 2021 VEEs to DEQ within 60 days of completion of the VEE testing. The VEE report for testing conducted on September 24, 2021 was received by DEQ on January 12, 2022. A DEQ

review of the VEE report received on January 12, 2022 determined that the report was completed by personnel with an expired Certification of Visible Opacity Reading. The VEEs were repeated by properly certified personnel on January 14, 2022, and the resultant VEE report was submitted to DEQ on January 17, 2022.

9. Condition No. 34 of the Permit states: “The permittee shall conduct recurring performance tests (VEEs) in accordance with 40 CFR 60.257 (a)(1), on the following:

- (5) Reclaim hoppers & feeders (Reference Nos. 42A – 42E);
- Reclaim conveyor (Reference No. 43);
- Transfer Belt #1 (Reference No. 48);
- Raw coal transfer and storage equipment (Reference Nos. 33 – 39)
- Coal fines reclaim circuit (Reference Nos. 40A – 40P); and
- Belt conveyors (Reference Nos. 31 and 32).

The additional performance tests (VEEs) shall be conducted as follows:

- a. If any 6-minute average opacity reading in the most recent performance test exceeds half the applicable opacity limit, a new performance test shall be conducted within 90 operating days of the date that the previous performance test was required to be completed.
 - b. Performance testing shall be repeated within 12 months of the date that the previous performance test was required to be completed, if the six-minute averages from the previous test were equal to or less than half the applicable opacity standard.
 - c. Within 60 days after the date of completing each performance evaluation conducted to demonstrate compliance with this subpart, the permittee shall submit a summary copy to the Director, Southwest Regional Office, Department of Environmental Quality, and to the United States Environmental Protection Agency; Energy Strategies Group; 109 TW Alexander DR; mail code: D243-01; RTP, NC 27711.”
10. 9 VAC 5-50-410 requires that: “Designated standards of performance... Subpart Y – Coal Preparation and Processing Plants. 40 CFR 60.250 through 40 CFR 60.258 (plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)...”
11. On January 12, 2022, DEQ received the VEE report for VEE testing conducted on September 24, 2021 for Reference Nos. 31, 32, 42A – 42D, 43, and 48.
12. On January 17, 2022, DEQ received the VEE report for the repeat VEE testing conducted on January 14, 2022.

13. On January 19, 2022, based on the results of the December 13, 2021 PCE, the Department issued NOV No. ASWRO002016 to DRT for the violations described in paragraphs C(2), C(4), and C(8), above.
14. On January 21, 2022, DRT provided a telephone response to the January 19, 2022 NOV and indicated that a written NOV response would follow.
15. On January 26, 2022, DRT submitted a permit application to reflect certain “as-built” changes to the equipment associated with the permitted rod mill operations, to include installation of the Marcy Rod Mill (Reference No. RM2) not in accordance with the Permit.
16. On February 24, 2022, DRT submitted a written response to the January 19, 2022 NOV.
17. The permit application, submitted on January 26, 2022, and the written NOV response, submitted on February 24, 2022, included calculations verifying that uncontrolled emissions from the Marcy Rod Mill (Reference No. RM2), when combined with controlled emissions from the Eirich Rod Mill (Reference No. RM1), the roll crusher (Reference No. CR), and the coke rail loadout by the mobile stacker conveyor (Reference No. CL) did not result in violations of the combined emissions limits set forth by Condition No. 23 of the Permit.
18. Based on the results of the December 13, 2021 PCE and the February 24, 2022 correspondence from DRT, the Board concludes that DRT has violated Permit Condition Nos. 2 and 34 and 9 VAC 5-80-1120(A), 9 VAC 5-80-1180, and 9 VAC 5-50-410, as described in paragraphs C(2) through C(5) and C(7) through C(10), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Dismal River Terminal, LLC, and Dismal River Terminal, LLC agrees to:

Pay a civil charge of \$13,929.41 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Dismal River Terminal, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Dismal River Terminal, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of DRT for good cause shown by DRT, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ASWRO002016, dated January 19, 2022. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, DRT admits the jurisdictional allegations, and neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. DRT consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. DRT declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by DRT to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. DRT shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. DRT shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DRT shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

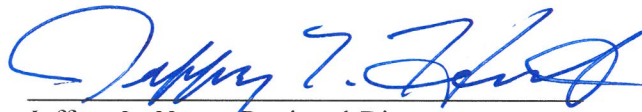
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and DRT. Nevertheless, DRT agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after DRT has completed all of the requirements of the Order;
 - b. DRT petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to DRT.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DRT from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by DRT and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of DRT certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind DRT to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of DRT.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, DRT voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of June, 2022.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Dismal River Terminal, LLC voluntarily agrees to the issuance of this Order.

Date: 6/6/22 By: [Signature], GENERAL MANAGER
(Person) (Title)
Dismal River Terminal, LLC

Commonwealth of Virginia

City/County of Buchanan

The foregoing document was signed and acknowledged before me this 6 day of

June, 2022 by Matthew Lester who is

General Manager of Dismal River Terminal, LLC, on behalf of the company.

[Signature]
Notary Public

7118662
Registration No.

My commission expires: 2/28/2023

Notary seal:

